IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 789 of 2000

in

SPECIAL CIVIL APPLICATIONNo 426 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

SAVITABEN VASANTLAL PATEL

Appearance:

MR HARDIK C RAWAL for Appellant

HL PATEL ADVOCATES for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE D.P.BUCH

Date of decision: 20/12/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

Admit. Upon joint request and considering the facts and urgent circumstances, this appeal is taken up for final hearing today.

2. The appellant, Gujarat State Road Transport Corporation (for short, 'the Corporation'), has challenged the order of Industrial Tribunal, passed in Reference (ITN) No.690 of 1998, dated 19.7.1999, whereby, the tribunal allowed the Reference of the respondent, a Lady Welfare Instructor, directing that the Corporation shall treat the employee as permanent w.e.f. 1.1.1986, and that her salary shall be fixed, adding two annual increments, and that her gratuity shall be paid w.e.f. 1.1.1975, which, upon being questioned before this Court in Special Civil Application No. 426 of 2000, came to be confirmed by the order of the learned Single Judge, dated 9.5.2000. Hence, this appeal under Clause 15 of the Letters Patent.

3. A few material and relevant facts may be needed at the outset. The respondent employee was working as part-time Lady Welfare Instructor w.e.f. 22.5.1969 and she was paid accordingly, as per the rules and regulations of the Corporation. She was, also, earning all other benefits as part-time employee. She was granted casual leave, holidays etc. Minimum wages as per rules have also been paid to her. She was working as part-time employee on the record of the Corporation, and she was getting all the benefits. Upon the Reference being made, her plea, that she was, as such working not as a part-timer, but she was working full time and, therefore, she could have been regularized, came to be allowed in the Reference before the tribunal, which came to be confirmed before the learned Single Judge.

4. Following aspects have, no longer, remained in controversy:

That the respondent employee, Smt.Savitaben V Patel was appointed and working as part-time Welfare Instructor from 22.5.1969, and she was paid accordingly as per rules and regulations of the Corporation. Her contention, in the Reference, before the tribunal was that though she was given status of a part-time Lady Welfare Instructor, she was working as a full time employee, which was objected and denied by the Corporation. She had retired in 1992. After considering

the facts and circumstances and evidence led by the parties, the Industrial Tribunal reached the conclusion, by allowing the Reference in part, that respondent-Savitaben Patel is entitled to be treated and paid, right from 1.1.1986, the time scale for the post of Lady Welfare Instructor, with additional two increments and accordingly, her salary should be fixed till the date of retirement. It was furuther directed that she would be entitled to other incidental differences of all benefits of revision of pay, etc. including gratuity, but without benefit of leave.

5. Being aggrieved by the directions given by the Indusrial Tribunal, the Corporation carried the matter before the learned Single Judge, who, after considering the facts and circumstances, and the rival submissions of the parties, modified the directions of the Industrial Tribunal. The learned Single Judge found and held that the employee is entitled to relief only from the date of approaching the forum for redressal and, she has approached the Tribunal in the year 1987, and therefore, instead of 1.1.1986, the benefits should be from the date of filing of the Reference, came to be substituted and accordingly the appellant came to be directed to pay all the benefits from that date only. Being dissatisfied by the earlier order of the Industrial Tribunal, and also the order of the learned Single Judge in the writ petition, the Corporation has come up before us in this Letters Patent Appeal, invoking aids of Clause 15 of the Letters Patent.

6. We have heard the learned Advocates appearing for the parties. In fact, most of the facts highlighted hereinabove, are no longer in controversy. After having taken into account the entire factual scenario emerging from the record of the present case and the full tenor and text of the impugned award of the Industrial Tribunal and the modified order of the learned Single Judge in the writ petition, and also the limited jurisdictional sweep, we are of the opinion, that the modified order recorded by the learned Single Judge, in the writ petition, could not be said to be in any way perverse, unjust, unreasonable, or otherwise, vulnerable, requiring our interference under Clause 15 of the Letters Patent. However, before parting, we would like to observe that ordinarily, a Writ Court, in a case like the one in hand, should give direction to pass appropriate and necessary orders to the master or management concerned, in the light of the facts and circumstances and the observations made in the award and the judgment, so as to give effect to them. However, since in the present case, there are

special facts and circumstances, which impelled us not to further, meticulously, direct for regularization and undergo long processual aspect and bearing in mind, the factum that the respondent has already superannuated herself from the services as Lady Welfare Instructor since 1992, and therefore, we conclude with the observations that it shall not be treated as a precedent.

7. With these observations, this appeal is dismissed. The appellant is directed to make full amount due and payable under the impugned order, as well as our order, within a spell of four weeks from the date of receipt of writ. Direct Service is permitted.

20.12.2000 [J N Bhatt, J.]
msp.

[D P Buch, J.]